IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Examiner: Hua Fan	:	PATENT APPLICATION
In re application of: RAINER UECKER	:	
Serial No.: 10/574,172	:	**METHOD FOR TRANSMITTING MESSAGES IN A NETWORK**
Filed: October 25, 2006	:	
Group Art Unit: 2456	:	
Confirmation No.: 4104	:	

CORRECTED BRIEF ON APPEAL

Ralph G. Fischer
Registration No. 55,179
BUCHANAN INGERSOLL & ROONEY PC
One Oxford Centre
301 Grant Street
Pittsburgh, Pennsylvania 15219

Attorney for Applicant

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BRIEF ON APPEAL

Real Party in Interest

The real party in interest is Siemens Enterprise Communications GmbH and its related United States company Siemens Enterprise Communications Inc.

Related Appeals and Interferences

There are no related appeals or interferences.

Status of Claims

Claims 16, 21 and 23-30 are pending in the application. The status of the claims is that claims 16, 21 and 23-30 have been rejected. Claims 1-15, 17-20, and 22 have been canceled. Applicant is appealing the rejection of claims 16, 21 and 23-30.

Status of Amendments

An amendment was filed on August 10, 2009 in response to the Final Office Action from which this appeal is taken. This amendment was entered by the Examiner.

Summary of Claimed Subject Matter

The invention defined by the claims on appeal relates to a method and network configured for transmitting messages in a network. Some embodiments of the claimed network and method are configured to evaluate messages to be sent and block the transmission of those messages or parts of those messages that were previously received by an addressed data terminal to reduce the amount of traffic in a network and reduce the costs and memory requirement of a network. *See e.g.* Specification, at page 3, line 27 through page 4, line 2 and Figures 1 and 2.

None of the pending claims contain means plus function limitations.

Claim 16 defines a method for transmitting messages in a network via data terminal connected to the network. *See* Specification, at page 3, lines 8-26. One step in the method of claim 16 includes sending a message to be relayed from a sender data terminal to an assigned first mail processing device assigned to the sender data terminal. *See e.g.* Specification, at page 3, lines 9-11 and 18-20 and page 7, lines 12-29 and Figures 1 and 2.

Another step in the method of claim 16 includes assigning a unique identifier to the message that indicates that a message to be relayed is on the sender data terminal or first mail processing device. The identifier includes subidentifiers that are each assigned to at least one message element contained in a relayed message. Support for this step in the method can be found in the specification at least at page 3, lines 8-11, page 3, lines 16-22, and page 7, lines 11-29 and Figures 1 and 2.

An additional step in the method of claim 16 includes sending a test message that has the subidentifiers from the first mail processing device to a second mail processing device assigned to a recipient address data terminal. Support for this step in the method can be found in the

specification at least at page 3, lines 8-20 and page 7, lines 19-29 and page 8, lines 1-6 and Figures 1 and 2.

Another step in the method of claim 16 includes evaluating in the second mail processing device the test message sent by the first mail processing device. The evaluating is configured to process each subidentifier in the test message relative to data present in the second mail processing device indicative of respective message elements previously relayed to the recipient address data terminal. Support for this step in the claimed method may be found in the specification at least at page 3, lines 22-24, page 8, lines 4-19 and Figures 1 and 2.

Yet another step in the method of claim 16 includes sending an evaluation-result of the test message. The evaluation-result indicates to the first mail processing device to transmit message elements evaluated as not previously relayed to the recipient address data terminal to the second mail processing device and further indicates to block message elements evaluated as previously relayed to the recipient address data terminal. Support for this step can be found in the specification at least at page 8, lines 4-20 and Figures 1 and 2.

An additional step in the method of claim 16 includes transmitting or blocking respective ones of the message elements to the second mail processing device in response to the evaluation-result of the test message. The transmitting or blocking of respective ones of the message elements is configured to suppress a duplicative reception by the recipient address data terminal of a message element present in a message previously received by the recipient address and is also configured to ensure that an amended message element of a message element present in the previously received message is transmitted to the recipient address. Support for this step can be bound in the specification at least at page 3, lines 13-16, page 3, lines 23-25, page 5, lines 2-8, page 8, lines 7-18, and page 8, lines 20-22, and Figures 1 and 2.

Another step in the method of claim 16 includes relaying to the recipient address data terminal respective message elements transmitted from the first mail processing device to the second mail processing device. Support for this step can be bound in the specification at least at page 8, lines 14-29, and page 8, line 30 through page 9, line 4, and Figures 1 and 2.

Claim 21 depends from claim 16 and requires the identifier to be evaluated on a mail server in the network. Support for this limitation can at least be found in the specification at page 4, lines 19-26 and page 5, line 29 through page 6, line 1.

Claim 23 depends from claim 16 and requires a notification of a blocked transmission to be forwarded to the sender and/or recipient if the transmission is blocked on the basis of the evaluation results. Support for this limitation can at least be found in the specification at page 5, lines 2-9 and page 8, lines 20 through page 9, line 4.

Claim 24 depends from claim 16 and includes limitations that require the identifier and/or relevant subidentifier to indicate the date and time of creation of the original message when these differ from the time of transmission, and/or an e-mail address of an original sender if this differs from the e-mail address of the sender, and/or the contents of the message or of the respective message element. Support for the limitations of claim 24 can be found in the specification at least at page 5, lines 2-9, page 6, lines 15-20, page 7, lines 1-7, page 7, lines 19-28,10-19 and page 8, lines 22-29.

Claim 25 depends from claim 16 and also requires a data terminal for executing the method has a mail processing device that is designed so that an identifier for a message based on data present concerning the entry of messages at an address data terminal from the past is evaluated in an evaluation unit, and such that based on the evaluation result, transmission of a

message to the address data terminal is triggered or blocked. Support for the limitations of claim 25 can be found in the specification at least at page 5, lines 10-28 and Figures 1 and 2.

Claim 26 depends from claim 25 and requires the mail processing device to form part of a mail server that is integrated in the data terminal. Support for the limitations of claim 26 can be found in the specification at least at page 5, lines 15-28 and Figures 1 and 2.

Claim 27 also depends from claim 25 and requires a memory unit for storing data concerning the entry of messages at a different data terminal. Support for the limitations of claim 26 can be found in the specification at least at page 5, lines 15-28 and Figures 1 and 2.

Claim 28 requires a network to include a sending module configured to send a message to be relayed from a sender data terminal to a first mail processing device assigned to that sender data terminal. *See e.g.* Specification, at page 3, lines 9-11 and 18-20 and page 7, lines 12-19 and Figures 1 and 2. The network also includes an assigning module configured to assign a unique identifier to the message that indicates that a message to be relayed is on the sender data terminal or in the first mail processing device. *See e.g.* Specification at page 3, lines 8-11, page 3, lines 16-22 and page 7, lines 12-29 and Figures 1-2. The identifier includes a plurality of subidentifiers that are each assigned to at least one message element contained in a relayed message. *See* Specification, at page 3, lines 8-11, page 3, lines 16-22, page 6, lines 15-20, page 7, lines 12-19. A test message sensing module is also included in the network. *See e.g.* Specification, at page 7, lines 29 through page 8, line 4, and Figures 1-2. The test sensing module is configured to send a test message including the subidentifiers from the first mail processing device to a second mail processing device assigned to a recipient address data terminal. *See e.g.* Specification at page 7, line 29 through page 8, line 4. The network further includes an evaluator configured to evaluate in the second mail processing device the test

message sent by the first mail processing device. *See e.g.* Specification, at page 8, lines 4-20 and Figures 1-2. The evaluation made by the evaluator is configured to process each subidentifier in the test message relative to data present in the second mail processing device indicative of respective message elements previously relayed to the recipient address data terminal. *See e.g.* Specification, at page 8, lines 4-22.

The network of claim 28 also includes a sending module configured to send an evaluation-result of the test message, a module configured to transmit or to block a transmission of respective ones of the message elements to a second mail processing device and a module configured to relay to the recipient address data terminal respective message elements transmitted from the first mail processing device to the second mail processing device. *See e.g.* Specification, at page 3, lines 13-15, page 3, lines 22-25, page 8, lines 4-22 and page 9, lines 1-4 and Figures 1-2.

The sending module is configured to send an evaluation-result of the test message from the second mail processing device to the first mail processing device. *See e.g.,* Specification at page 8, lines 4-22, Figures 1-2. The evaluation-result indicates to the first mail processing device to transmit message elements evaluated as not previously relayed to the recipient address data terminal to the second mail processing device and also indicates to block message elements evaluated as previously relayed to the recipient address data terminal from being transmitted to the second mail processing device. *See e.g.* Specification page 8, lines 4-22.

The module configured to transmit or block a transmission of respective ones of the message elements to the second mail processing device in response to the evaluation-result message is configured such that transmission or block of respective ones of the message elements is configured to suppress a duplicative reception by the recipient address data terminal

of a message element present in a message previously received by the recipient address and is also configured to ensure that an amended message element of the message element present in the previously received message is transmitted to the recipient address. *See e.g.,* Specification at page 3, lines 13-15, page 3, lines 22-25, page 5, lines 2-14, page 8, lines 4-22 and page 9, lines 1-4 and Figures 1-2.

Claim 29 depends from claim 28 and further requires the mail processing device to form part of a mail server. Support for this limitation can at least be found in the specification at page 4, lines 19-26 and page 5, line 29 through page 6, line 1.

Claim 30 depends from claim 29 and also requires that the network include a memory unit for storing previously relayed message elements. Support for the limitations of claim 30 can be found in the specification at least at page 5, lines 15-28.

Grounds of Rejection to be Reviewed on Appeal

1. Rejection of claims 16, 21, and 24-30 as being unpatentable over WO01/20855 to Etsuo combined with U.S. Patent Application Publication No. 2003/0023697 to Okada.

2. Rejection of claim 23 as being unpatentable over WO01/20855 to Etsuo combined with U.S. Patent Application Publication No. 2003/0023697 to Okada and JP 11232188 to Yoshihiro.

Argument

The Examiner has rejected all of the pending claims. The rejection of the claims is based on two references that teach away from the claimed invention. In fact, the combination of Etsuo and Okada suggested by the Examiner would render the inventions disclosed by Etsuo and Okada inoperable for their intended purpose. Furthermore, the combination of Etsuo and Okada fail to teach or suggest a method or network as required by the pending claims.

A. Burden Of Proving Obviousness Under 35 U.S.C. § 103

"All words in a claim must be considered in judging the patentability of that claim against the prior art." (MPEP § 2143.03). "If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious." *(Id.)*

Obviousness prevents the "issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art.' "*KSR International Co. v. Teleflex inc.*, 127 S.Ct. 1727, 1740 (U.S. 2007) (quoting 35 U.S.C. § 103). To show obviousness, an Examiner must show that the improvement is only "the predictable use of prior art elements according to their established functions." *KSR International Co. v. Teleflex inc.*, 127 S.Ct. 1727, 1740 (U.S. 2007).

"A statement that modifications of the prior art to meet the claimed invention would have been 'well within the ordinary skill of the art at the time the claimed invention was made' because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references." (MPEP § 2143.01). Rejections on obviousness cannot be sustained by mere conclusory statements; instead**, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.** *KSR*, 82 U.S.P.Q.2d at 1396.

For instance, an invention that permits the omission of necessary features and a retention of their function is an indicia of nonobviousness. *In re Edge,* 359 F.2d 896, 149 U.S.P.Q. 556 (CCPA 1966). A conclusory statement to the contrary is insufficient to rebut such an indicia of nonobviousness. (*See* MPEP § 2143.01). As another example, "[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention

being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious." (MPEP § 2143.01). Further, "the proposed modification cannot render the prior art unsatisfactory for its intended purpose." (MPEP § 2143.01).

The Supreme Court set forth the "framework for applying the statutory language of § 103" in *Graham v. John Deere Co.*, 383 U.S. 1, (1966). *KSR International Co.*, 127 S.Ct. 1727, 1734, 82 U.S.P.Q.2d 1385 (U.S. 2007). To make an obviousness determination, underlying factual determinations must first be made. *Graham*, 383 U.S. at 17. The scope and content of the prior art must be determined, the differences between the prior art and the claims at issue must be ascertained, and the level of ordinary skill in the pertinent art must be resolved. *Id.* Moreover, obviousness must not be distorted by using hindsight bias or *ex post* reasoning. *KSR International Co.*, 127 S.Ct. at 1742 (U.S. 2007) (citing *Graham*, 383 U.S. at 36).

Secondary considerations may also be provided to show that an asserted combination would not render claimed subject matter predictable or obvious. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). These secondary considerations include failure of others, unexpected results and the prior art teaching away from the invention. *Id.* at 17-18; *In re Beattie*, 974 F.2d 1309, 1313 (Fed. Cir. 1992) (declarations from those skilled in the art praising the claimed invention and opining that the art teaches away from the invention should be considered); *In re Sullivan*, 498 F.3d 1345, 1352 (Fed. Cir. 2007).

B. Rejection Of Claims 16, 21, and 24-30 As Being Unpatentable Over WO01/20855 To Etsuo Combined With U.S. Patent Application Publication No. 2003/0023697 To Okada

1. Claims 16, 21 And 23-27 Are Allowable Over Etsuo Combined With Okada

Claim 16 defines a method that includes the step of assigning a unique identifier to the message that indicates that a message to be relayed is on the sender data terminal. The identifier

includes a plurality of subidentifiers, each of which is assigned to at least one message element contained in a relayed message. The defined method of claim 16 also includes the step of sending a test message including the subidentifiers from a first mail processing device to a second mail processing device assigned to a recipient address data terminal. The method of claim 16 also includes the step of evaluating in the second mail processing device the test message sent by the first mail processing device. The evaluation is configured to process each subidentifier in the test message relative to data present in the second mail processing device indicative of respective message elements previously relayed to the recipient address data terminal.

The method of claim 16 also includes the step of sending an evaluation-result of the test message from the second mail processing device to the first mail processing device. The evaluation-result of the test message indicating to the first mail processing device to transmit message elements evaluated as not previously relayed to the recipient address data terminal to the second mail processing device and further indicating to block message elements evaluated as previously relayed to the recipient address data terminal from being transmitted to the second mail processing device.

The method of claim 16 also includes the step of transmitting or blocking a transmission of respective ones of the message elements to the second mail processing device in response to the evaluation-result of the test message. The transmitting or blocking of respective ones of the message elements is in response to the evaluation-result of the test message and is configured to suppress a duplicative reception by the recipient address data terminal of a message element present in a message previously received by the recipient address. The transmitting or blocking

is also configured to ensure that an amended message element of a message element present in the previously received message is transmitted to the recipient address.

Claims 21 and 23-27 depend directly or indirectly from claim 16 and, therefore, also contain the limitations of claim 16.

2. Etsuo Combined With Okada Does Not Teach Or Suggest Sending A Test Message Including The Subidentifiers From A First Mail Processing Device To A Second Mail Processing Device Assigned To A Recipient Address Data Terminal

The Examiner correctly reads Etsuo as not disclosing the sending of a test message that includes subidentifiers as required by claims 16, 21 and 23-27. (Office Action of April 20, 2009, at 6). The Examiner contends that Okada discloses or suggests such a limitation. (Office Action of April 20, 2009, at 6). The Examiner has incorrectly interpreted Okada.

Okada teaches an electronic mail composing device that has an editing unit for editing electronic mail by setting either to attach content of at least one attachment file or to notify only a title of the attachment file. (Okada, ¶ 8). Such an email as taught by Okada is not a test-message. Nor is the electronic message sent from one communication device 1 to another communication device 2 a test message sent from one mail processing device to another mail processing device.

A test message is a message that is sent from one processing device to another processing device that includes identifiers indicating different elements of a message to be sent to a recipient. However, the "Contents of the message elements are not also sent." Thus, the body of text within an email is not sent via a test message. To the contrary, identifiers representing different elements within a message are sent in a test message.

The message disclosed by Okada is not a test message. To the contrary, the message taught by Okada contains text from within the body of an electronic message. Indeed, all the

content of the electronic message is sent other than an attached file. (Okada, ¶ 10). Such a message cannot be considered a test message. To the contrary, it is merely an e-mail, or an electronic message.

a. Okada Does Not Teach Or Suggest Test Message Transmissions Between First and Second Mail Processing Devices

Further, the test messages of claims 16, 21 and 23-27 are sent from a first mail processing device to a second mail processing device. Such devices are not user terminals. To the contrary, such devices are mail servers or other mail processing devices.

Okada does not teach or suggest that a test message is sent between mail processing devices. Okada only teaches or suggests the sending of an email without an attachment from one terminal (communication device 1) to a second terminal (communication device 2) via a mail server (mail server 3). (Okada, Figure 1, ¶¶ 19-23). Okada does not teach or suggest any test message transmitted between mail processing devices.

3. Etsuo Combined With Okada Does Not Teach Or Suggest Sending An Evaluation-Result Of The Test Message From The Second Mail Processing Device To The First Mail Processing Device

The Examiner also cited Okada as disclosing the sending of an evaluation-result of the test message from a second mail processing device to a first mail processing device. (Office Action of April 20, 2009, at 6). To the contrary, Okada does not teach any mail processing device evaluating a test message. As discussed above, Okada does not teach or suggest any test message and also does not teach or suggest the sending of a test message from a first mail processing device to a second mail processing device.

Further, Okada does not teach or suggest a second mail processing device evaluating a test message nor sending an evaluation-result of a test message. Okada only discloses a second communication device, or user terminal, that receives an electronic message that includes a link

to an attachment file. The attachment file may then be received by the user terminal if that user requests the file by accessing the link. (Okada, ¶¶ 26-27).

4. Etsuo Combined With Okada Does Not Teach Or Suggest Transmitting Or Blocking A Transmission Of Respective Ones Of The Message Elements To The Second Mail Processing Device In Response To The Evaluation-Result Of The Test Message

The Examiner also contends that only Okada teaches or suggests the transmitting or blocking of a transmission of respective ones of the message elements to a second mail processing device in response to an evaluation-result of the test message. (Office Action of April 20, 2009, at 6). To the contrary, Okada does not teach or suggest any evaluation by a second mail processing device nor the sending of an evaluation-result by a second mail processing device.

Moreover, Okada does not teach or suggest the blocking or transmission of respective ones of the message elements to a second mail processing device. Okada teaches that a communication device, such as a user terminal, edits an email to replace an attachment file with the title of that file that includes a link that permits the sending of a forwarding demand. (Okada, ¶¶ 22, 24, 26-27). The attachment file is not initially sent in such an electronic message because it is replaced with the link by an editing unit 12 that is in the communication device 1. (Okada, ¶¶ 20-22).

There is no blocking of any message element by a mail processing device taught or suggested by Okada. To the contrary, Okada only teaches that the replacement of an attachment file with a title linked for permitting forwarding requests is provided by an editing unit 12 of a communication device 1, or user terminal. (Okada, ¶¶ 20-22). As discussed above, a mail processing device is not a terminal such as the communication device 1 taught by Okada.

5. Okada Cannot Be Properly Combined With Etsuo

Etsuo discloses a device that requires a mail processing device, such as mail server 300, to determine whether or not an electronic message it received from a client has the exact same text as a previous email sent from that client to another client. If the exact same text is present, the mail server 300 issues a no reception notice to the addressed client so that client does not receive the notices for electronic mails containing the identical text. (Etsuo - English translation Abstract, p. 10, lines 15-22).) The system disclosed by Etsuo requires the use of a mail server and requires all the processing to be done by just one mail server to determine if that email was previously sent to another client. (Etsuo - English translation p. 13, lines 2-8). There is no interaction with a second mail processing device. Nor is there any test message or evaluation-result messages transmitted in the system disclosed by Etsuo.

In contrast to the system disclosed by Etsuo, Okada requires an e-mail to avoid having an attachment by an editing unit of a communication device 1 removing the attachment and replacing it with a linked title. (Okada, ¶¶ 20-2, 24, 26-27). The system disclosed by Okada requires a mail server to not be used for such replacement. Further, the system disclosed by Okada requires that the attached file and all the processing occurs locally on the communication device 1.

Changing the system disclosed by Okada to interact with the mail server to block transmission of message elements impermissibly modifies the principle of operation of the invention of Okada, the local editing unit 12. This is impermissible. MPEP § 2143.01 ("[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious."). For this reason it was not proper for the Examiner to reply upon the combination of Okada with Etsuo.

6. Okada And Etsuo Teach Away From The Claims

Further, Etsuo and Okada both clearly teach away from the claims. Neither Okada nor Etsuo teach the use of any test message sent between mail processing devices nor an evaluation result sent between the mail processing devices. Indeed, both Okada and Etsuo only teach a system that utilizes one mail processing device, a mail server.

Moreover, both Okada and Etsuo, teach that only one device is involved in determining whether to not transmit an attached file (Okada) or whether to not transmit a reception notice (Etsuo). The system of Etsuo utilizes a server that determines whether an email receipt notice should not be sent to a client. (Etsuo - English translation p. 36, lines 3-18; p. 40, lines 20-22). The system of Okada uses an edit device 12 of a communication device to determine whether to send or not send an attachment file. Such systems teach away form the sending of test messages to a second mail processing device and also teach away from the use of any evaluation of test messages or sending of an evaluation result by a second mail processing unit. Indeed, both Okada and Etsuo teach that only one mail processing device should be used to achieve the functionality provided in their systems.

Clearly the combination of Etsuo and Okada cannot render the pending claims 16, 21, and 23-27 obvious. In fact, this combination of art clearly teaches away from the claimed method.

7. Claims 28-30 Are Allowable Over Etsuo Combined With Okada

Claim 28 defines a network that includes an assigning module configured to assign a unique identifier to the message that indicates that a message to be relayed is on the sender data terminal or in the first mail processing device. The identifier includes a plurality of subidentifiers, each of which is assigned to at least one message element contained in a relayed message. The network of claim 28 also includes a test message sensing module configured to

send a test message including the subidentifiers from the first mail processing device to a second mail processing device assigned to a recipient address data terminal. The network of claim 28 also includes an evaluator configured to evaluate in the second mail processing device the test message sent by the first mail processing device. The evaluating is configured to process each subidentifier in the test message relative to data present in the second mail processing device indicative of respective message elements previously relayed to the recipient address data terminal.

The network of claim 28 also includes a sending module configured to send an evaluation-result of the test message from the second mail processing device to the first mail processing device. The evaluation-result of the test message indicating to the first mail processing device to transmit message elements evaluated as not previously relayed to the recipient address data terminal to the second mail processing device and also indicating to block message elements evaluated as previously relayed to the recipient address data terminal from being transmitted to the second mail processing device. A module configured to transmit or to block a transmission of respective ones of the message elements to the second mail processing device in response to the evaluation-result message is also included in the network of claim 28. The transmission or block of respective ones of the message elements in response to the evaluation-result of the test message is configured to suppress a duplicative reception by the recipient address data terminal of a message element present in a message previously received by the recipient address. The transmission or block of respective ones of the message elements is also configured to ensure that an amended message element of the message element present in said previously received message is transmitted to the recipient address.

Claims 29-30 depend directly or indirectly from claim 28 and, therefore, also contain the limitations of claim 28.

8. Etsuo Combined With Okada Does Not Teach Or Suggest Sending Of Test Messages, Sending Evaluation Results Of Test Messages Nor The Transmission Or Block Of Respective Ones Of Message Elements As Required By Claims 28-30

As discussed above with reference to claims 16, 21 and 23-27, the cited art fails to teach or suggest sending of test messages, sending evaluation results of test messages, and also fails to teach or suggest the transmission or block of respective ones of message elements. Therefore, the cited art cannot render the pending claims obvious.

Moreover, the cited art cannot be combined because the combination required by the Examiner impermissibly alters the principle mode of operation for the invention of Okada. Finally, the cited art teaches away from the pending claims, which also shows the pending claims are not rendered obvious by the cited art.

For at least the above reasons, the rejection of claims 28-30 should be reversed.

C. Rejection Of Claim 23 As Being Unpatentable Over WO01/20855 tT Etsuo Combined With U.S. Patent Application Publication No. 2003/0023697 To OkadaAand JP 11232188 To Yoshihiro.

The combination of Etsuo and Okada do not teach or suggest any of the limitations of claim 16. Claim 23 depends from claim 16 and is allowable because claim 16 is allowable, as discussed above. Indeed, as noted above Etsuo teaches away from the claims and cannot be properly combined with Okada.

Further, Yoshihiro nor the combination of Yoshihiro with Etsuo and Okada do not teach or suggest the limitations of claim 23. None of the cited art teaches or suggest any sending of a test message that includes subidentifiers, that a test message is sent between mail processing devices, sending of an evaluation-result of the test message from a second mail processing

device to a first mail processing device or transmitting or blocking of a transmission of respective ones of the message elements to a second mail processing device in response to an evaluation-result of the test message. As discussed above, the combination of Okada and Etsuo do not teach or suggest such limitations. Further, Yoshihiro does not teach or suggest such limitations. Indeed, the Examiner has not even cited Yoshihiro as teaching or suggesting these limitations.

Conclusion

For the foregoing reasons the claims on appeal are patentable over the cited references.

Reversal of the rejections of the appealed claims is respectfully requested.

Respectfully submitted,

Dated: February 1, 2010

/Ralph G. Fischer/

Ralph G. Fischer
Registration No. 55,179
BUCHANAN INGERSOLL & ROONEY PC
One Oxford Centre
301 Grant Street, 20th Floor
Pittsburgh, PA 15219-1410
(412) 392-2121

Attorney for Applicant

Claims Appendix

The claims on appeal:

16. A method for transmitting messages in a network via data terminals connected thereto, comprising:

sending a message to be relayed from a sender data terminal to an assigned first mail processing device assigned to the sender data terminal;

assigning a unique identifier to the message that indicates that a message to be relayed is on the sender data terminal, or in the first mail processing device, wherein the identifier comprises a plurality of subidentifiers, each of which is assigned to at least one message element contained in a relayed message;

sending a test message including the subidentifiers from the first mail processing device to a second mail processing device assigned to a recipient address data terminal;

evaluating in the second mail processing device the test message sent by the first mail processing device, the evaluating configured to process each subidentifier in the test message relative to data present in the second mail processing device indicative of respective message elements previously relayed to the recipient address data terminal;

sending a evaluation-result of the test message from the second mail processing device to the first mail processing device, said evaluation-result of the test message indicating to the first mail processing device to transmit message elements, evaluated as not previously relayed to the recipient address data terminal, to the second mail processing device, and further indicating to block message elements, evaluated as previously relayed to the recipient address data terminal, from being transmitted to the second mail processing device;

transmitting or blocking a transmission of respective ones of the message elements to the second mail processing device in response to the evaluation-result of the test message, wherein said transmitting or blocking of respective ones of the message elements in response to the evaluation-result of the test message is configured to suppress a duplicative reception by the recipient address data terminal of a message element present in a message previously received by the recipient address, and is further configured to ensure that an amended message element of a message element present in the previously received message is transmitted to the recipient address; and

relaying to the recipient address data terminal respective message elements transmitted from the first mail processing device to the second mail processing device.

21. The method according to claim 16, wherein the identifier is evaluated on a mail server in the network.

23. The method according to claim 16, wherein a notification of the blocked transmission is forwarded to the sender and/or recipient if the transmission is blocked on the basis of the evaluation results.

24. The method according to claim 16, wherein the identifier and/or the relevant subidentifier indicates the date and time of creation of the original message where these differ from the time of transmission, and/or an e-mail address of an original sender if this differs from the e-mail address of the sender, and/or the contents of the message or of the respective message element.

25. The method according to claim 16, wherein there is a data terminal for executing the method and having a mail processing device that is designed such that an identifier for a message based on data present concerning the entry of messages at an address data terminal from the past is evaluated in an evaluation unit, and such that, based on the evaluation result, transmission of a message to the address data terminal is triggered or blocked.

26. The method according to claim 25, wherein the mail-processing device forms part of a mail server, which is integrated in the data terminal.

27. The method according to claim 25, wherein a memory unit for storing data concerning the entry of messages at a different data terminal.

28. A network, comprising:

a sending module configured to send a message to be relayed from a sender data terminal to a first mail processing device assigned to the sender data terminal;

an assigning module configured to assign a unique identifier to the message that indicates that a message to be relayed is on the sender data terminal, or in the first mail processing device, wherein the identifier comprising a plurality of subidentifiers, each of which is assigned to at least one message element contained in a relayed message;

a test message sensing module configured to send a test message including the subidentifiers from the first mail processing device to a second mail processing device assigned to a recipient address data terminal;

an evaluator configured to evaluate in the second mail processing device the test message sent by the first mail processing device, the evaluating configured to process each subidentifier in the test message relative to data present in the second mail processing device indicative of respective message elements previously relayed to the recipient address data terminal;

a sending module configured to send an evaluation-result of the test message from the second mail processing device to the first mail processing device, said evaluation-result of the test message indicating to the first mail processing device to transmit message elements, evaluated as not previously relayed to the recipient address data terminal, to the second mail processing device, and further indicating to block message elements, evaluated as previously relayed to the recipient address data terminal, from being transmitted to the second mail processing device;

a module configured to transmit or to block a transmission of respective ones of the message elements to the second mail processing device in response to the evaluation-result message, wherein the transmission or block of respective ones of the message elements in response to the evaluation-result of the test message is configured to suppress a duplicative reception by the recipient address data terminal of a message element present in a message previously received by the recipient address, and is further configured to ensure that an amended message element of the message element present in said previously received message is transmitted to the recipient address; and

a module configured to relay to the recipient address data terminal respective message elements transmitted from the first mail processing device to the second mail processing device.

29. The network according to claim 28, wherein the mail-processing device forms part of a mail server.

30. The network according to claim 29, further comprising a memory unit for storing previously relayed message elements.

Evidence Appendix

None.

Related Proceedings Appendix

None.